

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiff(s),

v.

OFFICE OF MANAGEMENT AND
BUDGET,

Defendant(s).

No. C07-4997 MHP (BZ)

REPORT AND RECOMMENDATION

On September 27, 2007, the Center for Biological Diversity ("plaintiff") filed suit against the Office of Management & Budget ("defendant"), alleging violations of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. On July 14, 2009, this matter was referred to me by the Honorable Marilyn H. Patel to conduct an *in camera* review of documents withheld by defendants under two claimed exemptions, the deliberative process privilege and the presidential communications privilege.¹ The following is my report and

¹ Where part of a document was disclosed, the Court only reviewed the redacted portions.

1 recommendation concerning whether the exemptions claimed by
2 defendant were properly asserted.

3 In her first order on the parties' cross-motions for
4 summary judgment, Judge Patel set forth the factual background
5 of this case, as well as a comprehensive legal discussion of
6 the exemptions claimed by defendant (see Doc. No. 59).

7 Accordingly, I find no need to do so again here. In the
8 interests of efficiency, I have set forth below a list of the
9 individuals, along with their respective titles, who drafted,
10 sent, and received the emails and documents at issue. These
11 individuals' last names will be repeated throughout the
12 following report and recommendation, but their respective
13 titles will be omitted.²

- 14 • Julie Abraham: Director, Office of International Policy,
15 Fuel Economy and Consumer Programs, NHTSA
- 16 • Soren Anderson: CEA
- 17 • Donald Arbuckle: Deputy Administrator, OIRA
- 18 • John Asalone: OMB
- 19 • William Badger: Special Assistant to the President for
20 Economic Policy, EOP, NEC
- 21 • Ben Bernanke: Chairman CEA
- 22 • Larry Blincoe: NHTSA
- 23 • Josh Bolton: OMB Director
- 24 • Noble Bowie: NHSTA Special Assistant to the Administrator
- 25 • Allison Boyd: Special Advisor to the Domestic Policy

27 ² If an individual's title was not provided, or if the
28 individual was only included on one email, his or her name is
provided in full.

Council of WHO

- Elizabeth Branch: Counselor to OIRA Administrator, OMB, OIRA
- Jason Burnett: EPA
- MaryAnne Calamas: Confidential Assistant to OIRA Administrator, OIRA
- Christopher Calamita: Chief Counsel, NHTSA
- Khary Cauthen: EOP, CEQ, Special Assistant to the Chair
- James Connaughton: Chairman of CEQ, CEQ
- David Conover: Department of Energy
- Stephen Cote: EOP, OMB Deputy Associate Director, House
- Cameron Cushman: Executive Assistant to the Assistant to the President
- Logan Dryden: OMB, Confidential Assistant to OMB Deputy Director
- Lisa Epifani: White House Office of Policy Development
- Robert Fairweather: Deputy Associate Director, OMB
- Peter Feather: Chief, Fuel Economy Division, NHTSA
- Barry Felrice: Director, Washington Regulatory Affairs, DaimlerChrysler Corporation
- Debbie Fiddelke: Special Assistant to the President for Legislative Affairs, WHO, EOP
- Jacqueline Glassman: Chief Counsel, NHTSA
- John Graham: Administrator, OIRA
- Maggie Grant: EOP, OIA Special Assistant to the President for Intergovernmental Affairs
- Kevin Green: VOLPE/DOT
- Bryan Hannegan: Assistant Director for Energy &

1 Transportation, CEQ

2 • Michael Harrington: DOT

3 • David Haun: EOP, OMB Transportation Deputy Associate
4 Director

5 • Eric Haxthausen: Economist, Environmental Defense

6 • Keith Hennessey: Assistant to the President for Domestic
7 Policy, NEC, WHO

8 • Brian Hook: Special Assistant to the President for
9 Policy, WHO, Office of the Chief of Staff, EOP

10 • Chase Hutto: Deputy Assistant to the Vice President for
11 Domestic Policy (Energy)

12 • Diane Jones: Office of the Commissioner for Trademarks
13 Intent to Use Supervisor

14 • Joel Kaplan: Deputy Director, OMB

15 • Ken Katz: Engineer, NHTSA

16 • Jeremy Katz: WHO

17 • Brett Kavanaugh: Assistant to the President and Staff
18 Secretary, WHO

19 • William Kelley: EOP, Deputy Assistant to the President
20 and Deputy Counsel

21 • Elissa Konove: Program Examiner, OMB, Transportation,
22 Homeland, Justice & Service Branch; Counselor to OIRA
23 Administrator, OMB, OIRA, General Government Services
24 Programs

25 • John Knepper: Assistant General Counsel, OMB

26 • Steve Kratzke: Department of Transportation

27 • Elan Liang: EOP, Special Assistant to the President for
28 Legislative Affairs

- 1 • Dominic Mancini: Economist, OIRA
- 2 • Donald Marron: Member, Council on Economic Advisors, EOP
- 3 • Catherine Martin: EOP Deputy Assistant to the President
- 4 and Deputy Director of Communications
- 5 • Mark Menchik: Policy Analyst, OMB, OIRA, EOP
- 6 • Steven Mertens: Chief, Energy Branch, OMB, Natural
- 7 Resources Programs, EOP
- 8 • Charles McGrath: Deputy Chief of Staff to the Vice
- 9 President, White House
- 10 • Stephen McMillin: Assistant Director for General
- 11 Government Programs, OMB
- 12 • Christopher Michel: Deputy Assistant to the President and
- 13 Deputy Director of Speechwriting, WHO, EOP
- 14 • Scott Milburn: OMB Press Officer
- 15 • Paul Noe: Counselor to the Administrator of OIRA
- 16 • Kevin O'Donovan: Deputy Assistant to the Vice President
- 17 for Domestic Policy (Energy), WHO
- 18 • Neil Patel: EOP, OVP Assistant to the Vice President and
- 19 Staff Secretary
- 20 • Dana Perino: Press Secretary, CEQ
- 21 • Joan Petrie: Attorney for DOT
- 22 • Don Pickrell: Economist, NHTSA
- 23 • Quesan Rice: EOP, CEQ Executive Assistant to the Chair
- 24 • Krista Ritacco: EOP, Executive Assistant to the Chairman
- 25 • Jeffrey A. Rosen: General Counsel, OGC, DOT
- 26 • Karl Rove: Deputy Chief of Staff, WHO, Office of the
- 27 Chief of Staff, EOP
- 28 • Jeff Runge: Administrator, NHTSA

- 1 • Richard Russell: Associate Director for Technology,
2 Office of Science and Technology Policy, EOP
- 3 • Robert Sandoli: EOP, OMB Program Examiner
- 4 • Eleanor Schiff: DPC &WHO Special Assistant to the
5 President for Domestic Policy
- 6 • Suzanne Scruggs: DOT Director, Scheduling and Advance
- 7 • Jess Sharp: Deputy Assistant to the President for
8 Domestic Policy, DPC
- 9 • Kristen Silverberg: Deputy Assistant to the President and
10 Advisor to the Chief of Staff, Office of the Chief of
11 Staff
- 12 • Jim Simons: Director of the Office of Policy Analysis,
13 NHTSA
- 14 • Margaret Stewart: EOP, OMB Deputy Associate Director
- 15 • Elizabeth Sykes: Executive Assistant, WHO, DPC, EOP
- 16 • Richard Theroux: Economist, OIRA
- 17 • Edmond Toy: Engineer & Policy Analyst, OIRA
- 18 • Tevi Troy: Deputy Assistant to the President for Domestic
19 Policy, DPC, WHO
- 20 • Jared Weinstein: EOP official
- 21 • Alice Williams: EOP, CEA Executive Assistant to the
22 Chairman
- 23 • Candida P. Wolff: Assistant to the President for
24 Legislative Affairs, WHO, Legislative Affairs, EOP
- 25 • Stephen Wood: Chief Counsel, NHTSA

26 The Court recommends that private phone numbers and
27 email addresses not be disclosed, unless plaintiffs can
28 demonstrate a particularized need.

ARMS DOCUMENTS

Document 78: This document, dated 9/12/03, is an email from Graham to Theroux and Toy. In this email, Graham describes the potential employment impacts in the United States of more stringent light truck CAFÉ standards. The Court reviewed the document *in camera* and recommends that it be found exempt from disclosure because it is pre-decisional and deliberative and contains no reasonably segregable factual material.

Document 80: This document, dated 9/15/03, is an email from Graham to Theroux and Toy. In this email, Graham shares various thoughts about the current structure of light truck CAFE standards and poses several questions to Toy and Theroux about how the statutory language defines light trucks in connection with the drafting of the ANPRM for NHTSA's CAFÉ regulation. The Court reviewed the document *in camera* and recommends that it be found exempt from disclosure because it is pre-decisional and deliberative and contains no reasonably segregable factual material.

Document 117: The document, dated 9/26/03, is an email from Toy to Graham. In this email, Toy offers his observations and opinions and poses several questions to Graham about the potential weight classification system in the draft CAFÉ ANPRM. The Court reviewed the document *in camera* and recommends that it be found exempt from disclosure because it is pre-decisional and deliberative and contains no reasonably segregable factual material.

1 Document 157: This document, dated 10/16/03, is an email from
2 Toy to Graham. In this email Toy provides his analysis of the
3 potential safety implications of a change in the light truck
4 CAFÉ standard. The Court reviewed the document *in camera* and
5 recommends that it be found exempt from disclosure because it
6 is pre-decisional and deliberative and contains no reasonably
7 segregable factual material.

8
9 Document 161: This document, dated 10/17/03, contains two
10 emails, one from Theroux to Toy, and another that contains
11 Toy's response to Theroux's initial email. In these emails,
12 Toy and Theroux discuss their thoughts about the potential
13 safety implications of large pick-ups and whether they should
14 be included as part of the CAFÉ standards. The Court reviewed
15 the document *in camera* and recommends that it be found exempt
16 from disclosure because it is pre-decisional and deliberative
17 and contains no reasonably segregable factual material.

18
19 Document 209: This document, dated 11/04/03, is an email from
20 Theroux to Graham containing a one page attachment. The email
21 has been released, but the attachment is being withheld. The
22 attachment is a draft assessing the effects of two potential
23 CAFÉ reforms on light truck prices and weight. The Court
24 reviewed the document *in camera* and recommends that it be
25 found exempt from disclosure because it is pre-decisional and
26 deliberative and contains no reasonably segregable factual
27 material.

28 ///

1 Document 295: This document, dated 12/8/03, is an email from
2 Hunt to Toy and Theroux. In this email, Hunt forwards the
3 comments and opinions of various Environmental Protection
4 Agency staff members regarding aspects of the draft ANPRM on
5 CAFÉ reform. This document was partially released. The
6 agency asserts that any withheld factual material is
7 inextricably intertwined with deliberative opinions. The
8 Court reviewed the document *in camera* and recommends that the
9 portions of the document that were not already released be
10 found exempt from disclosure because those portions contain
11 pre-decisional and deliberative content and no reasonably
12 segregable factual material.

13
14 Document 296: This document, dated 12/8/03, is an email from
15 Wood to Hunt, Eisner, Theroux, and Petrie. In this email,
16 with attachment, Wood forwards a draft of a CAFÉ request for
17 technical information related to NHTSA's CAFÉ regulation. The
18 Court reviewed the document *in camera* and recommends that it
19 be found exempt from disclosure because it is pre-decisional
20 and deliberative and contains no reasonably segregable factual
21 material.

22
23 Document 299: This document, dated 12/11/03, is an email from
24 Toy to Graham forwarding Document 295 (the EPA's comments on
25 the draft ANPRM on CAFÉ reform). The agency has redacted the
26 EPA's comments, but has otherwise released Document 299 in
27 full. The Court reviewed the document *in camera* and concludes
28 that for the reasons discussed under Document 295, the agency

1 properly withheld the redacted portions of the document from
2 disclosure. For these reasons, the Court recommends that the
3 redacted portions of the document be found exempt from
4 disclosure.

5
6 Documents 375, 378: This document, dated 12/11/03, is an email
7 from Theroux to Graham. In this email, Theroux relays a
8 comment from NHTSA regarding a correction to the draft ANPRM.
9 Document 375 is embedded in Document 378, and has been
10 redacted. Otherwise, Document 378 has been released. The
11 Court reviewed the documents *in camera* and recommends that
12 Document 375 (as well as Document 378, to the extent that it
13 contains the text from Doc. 375) be found exempt from
14 disclosure because it is pre-decisional and deliberative and
15 contains no reasonably segregable factual material.

16
17 Documents 381, 383, 384: These documents contain an email
18 chain, dated 12/17/03. The original email (Doc. 381) is from
19 Theroux to Graham, and has been partially released. The next
20 email is a response to Doc. 381 from Graham to Theroux, which
21 has not been released. The final email is from Theroux to
22 Toy, in which Theroux forwards Doc. 381 and 383 to Toy. The
23 text of the final email (Doc. 384) has been released. The
24 redacted portions of the documents discuss whether to make
25 changes to the CAFÉ ANPRM, and having reviewed the text of the
26 redacted portions *in camera*, the Court recommends that the
27 documents be found exempt from disclosure because they are
28 pre-decisional and deliberative and contain no factually

1 segregable material.

2
3 Document 400: This document, dated 12/17/03, is an email from
4 Graham to Theroux. The document has been partially released.
5 In the redacted portions of this email, Graham offers his
6 thoughts and comments regarding the December 17, 2003 draft
7 of the CAFÉ ANPRM. With the exception of Graham's opinions,
8 the email has been disclosed in full. The Court reviewed the
9 document *in camera* and recommends that the portion of the
10 document that is redacted be withheld because it is pre-
11 decisional and deliberative and contains no factually
12 segregable material.

13
14 Documents 425, 426, 431: These documents, dated 12/18/03,
15 contain an email chain that includes an original email from
16 Hunt to Graham, Theroux, Vandersarl, and Calamas. In the
17 initial email, Hunt forwards a draft WHHU on CAFÉ. The
18 attachment is not included in the Documents reviewed by the
19 Court. This initial email contains no pre-decisional or
20 deliberative information, and the Court recommends that it be
21 released. The next email, from Vandersarl to Hunt and Theroux
22 poses some recommendations and a question about the draft.
23 The final email from Hunt to Theroux asks, in part, whether
24 Hunt responded to Vandersarl's email. The Court reviewed
25 these documents *in camera* and concludes that the factual
26 information is reasonably segregable and should therefore be
27 released. The Court therefore recommends that the documents
28 be produced except for Vandersarl's email to Hunt and Theroux

1 and the second line of Hunt's second email to Theroux, as
2 these portions of the documents contains pre-decisional and
3 deliberative comments.

4
5 Document 596: This document, dated 1/31/04, is an email from
6 Graham to Vandersal. The email is a one-line email that
7 relates to Vandersarl's 12/18/03 email (contained in Documents
8 426 and 431). The Court reviewed the document *in camera* and
9 because the Court finds that the email simply requests
10 clarification from Vandersal without revealing any information
11 in the deliberative process, the Court recommends that the
12 document be released.

13
14 Document 599: This document, dated 2/2/04, is an email chain
15 that begins with the text from Document 596, but includes two
16 additional emails, one from Vandersal, which responds to
17 Graham's 1/31/04 request for clarification, and another email
18 that contains Graham's response to Vandersal's email. The
19 emails concern CAFÉ data that is being prepared to be sent to
20 the WW. The Court reviewed the document *in camera* and
21 recommends that with the exception of the text that mirrors
22 Document 596, the document be found exempt because it contains
23 pre-decisional and deliberative comments and contains no
24 reasonably segregable factual material.

25
26 Document 607: This document, dated 2/2/04, is an email from
27 Wood to Hunt, and includes a response from Hunt back to Wood.
28 In this email, plus attachment, Hunt provides his comments in

1 response to an email regarding NHTSA's significant
2 rulemakings. The Court reviewed the document *in camera* and
3 recommends that the document be found exempt from disclosure
4 because it contains pre-decisional and deliberative comments
5 and contains no reasonably segregable factual material.

6
7 Document 609: This document, dated 2/3/04, is an email from
8 Feather to Toy in which Feather forwards an email that was
9 originally sent from Green to Maples. The document includes
10 an attachment. The substance of the email is in the original
11 email from Green to Maples, which sets forth a list of the
12 documents that are attached to the email. The email and the
13 documents concern materials related to light-truck CAFÉ
14 standards. The Court reviewed the document *in camera* and
15 recommends that the email and the attached documents be found
16 exempt from disclosure because the documents contain pre-
17 decisional and deliberative content and no reasonably
18 segregable factual material.

19
20 Document 634: This document, dated 2/3/04, is an email chain.
21 The chain initiates with an email from Graham to Silverberg
22 and contains three other emails wherein Silverberg and Graham
23 respond to one another. The emails concern a draft of fact
24 sheets on CAFÉ reforms. The Court reviewed the document *in*
25 *camera* and concludes that the presidential communications
26 privilege applies and recommends that the document be
27 withheld.

28 ///

1 Documents 694, 695, 696: These documents, dated 2/10/04,
2 contain an email chain that begins with an email from Boyd to
3 Graham (Doc. 694). Although privilege is claimed as to
4 Document 694, the Court notes that the text of Document 694
5 appears to have been released, as the text of that Document
6 appears in full in Document 695, which was redacted in part
7 and released in part. As to Documents 695 and 696, the Court
8 reviewed the document *in camera* and concludes that the
9 redacted portions of these documents do not reveal any
10 deliberative opinions and the Court therefore recommends that
11 the document should be released, as the information contained
12 therein is merely factual information related to the
13 scheduling of meetings.

14
15 Documents 698, 702: Document 698 is embedded in Document 702.
16 Document 702 is an email chain, dated 2/11/04, with an initial
17 email from Boyd to Graham wherein Boyd asks Graham several
18 questions about NHTSA's CAFÉ regulation and offers her
19 thoughts and opinions on a memo on the CAFÉ regulations that
20 had been circulated. The next email, from Graham to Boyd,
21 responds to the questions posed by Boyd in Document 698. The
22 Court reviewed the documents *in camera* and recommends that the
23 documents be found exempt from disclosure because they are
24 pre-decisional and deliberative and contain no reasonably
25 segregable factual information.

26
27 Documents 735, 736, 737: Documents 735 and 736 are embedded in
28 Document 737. Document 737 is an email chain, dated 3/8/04,

1 that begins with an email from Graham to Toy, asking for
2 clarification from Toy about the various options available to
3 firms for them to meet CAFÉ compliance standards (Doc. 735).
4 The next email (Doc. 736) contains a response to Graham's
5 email from Toy and Document 737 completes the email chain with
6 a response from Graham back to Toy. The Court reviewed the
7 documents *in camera* and recommends that because the
8 information in these documents is pre-decisional and
9 deliberative and contains no reasonably segregable factual
10 information, they be exempt from disclosure.

11
12 Documents 766, 767: Document 766 is embedded in Document 767.
13 Document 767 is an email chain, dated 3/29/04, beginning with
14 Document 766, which is an email from Graham to Calamas. The
15 chain ends with a response from Calamas to Graham and
16 Hannegan. The Court reviewed the documents *in camera* and
17 concludes that neither the presidential communications
18 privilege nor the deliberative process privilege have been
19 properly asserted because the emails merely contain logistical
20 information. Therefore, the Court recommends that the
21 documents be released.

22
23 Document 770: This document, dated 3/30/04, is an email from
24 Theroux to Graham that forwards an email from Weinstein. The
25 email discusses Weinstein's comments and opinions on an Auto
26 Fuel Economy Power Point presentation. In this one page
27 email, Theroux both forwards Weinstein's thoughts about the
28 power point, and also includes his own observations about

1 Weinstein's comments. The Court reviewed the document *in*
2 camera and recommends that it be found exempt from disclosure
3 because it is pre-decisional and deliberative and contains no
4 reasonably segregable factual material.

5
6 Documents 784, 789, 791: These documents contain an email
7 chain. Documents 784 and 789 are embedded in Document 791.
8 Document 784, dated 3/31/04, is an email from Graham to Kaplan
9 that discusses the impact of gasoline prices. Document 789
10 (which embeds Doc. 784), also dated 3/31/04, is an email from
11 Kaplan to Graham, responding to Graham's email (Doc. 784).
12 Document 789 has been released (the portions of Doc. 789 that
13 contain Doc. 784 have been redacted). Document 791, also
14 dated 3/31/04, is an email from Frankfurt to Calamas.
15 Document 791 has been released, with only the portions of Doc.
16 784 redacted and withheld. The Court reviewed the documents *in*
17 camera and recommends that the portions of the documents that
18 were withheld previously be found exempt from disclosure
19 because they are pre-decisional and deliberative and contain
20 no reasonably segregable factual information.

21
22 Document 785, 788, 790, 795, 796, 797, 798, 802, 805, 807,
23 808: These documents contain various iterations of an email
24 chain. Each email is dated 3/31/04. The chain begins with
25 Document 785, which is an email from Graham to Silverberg,
26 discussing the impact of gasoline prices. Document 788 is an
27 email from Connaughton to Silverberg and Graham, responding to
28 Doc. 785 with a follow up question. Document 790 is an email

1 from Silverberg to Connaughton, Graham and Hannegan wherein
2 Silverberg responds to Document 788 and offers a follow up
3 question. Document 795 is an email from Hannegan to
4 Connaughton, Graham, and Silverberg, in which Hannegan
5 responds to Document 790 by offering his thoughts and comments
6 about CAFÉ's rulemaking process. Document 796 is an email
7 from Connaughton to Graham and Silverberg wherein Connaughton
8 responds to Document 790 and offers to meet. Document 797 is
9 an email from Silverberg to James Connaughton, wherein
10 Silverberg suggests a meeting time. Document 798 is an email
11 from Silverberg to Connaughton, Graham, and Hannegan wherein
12 Silverberg responds to Document 795 by offering her thoughts
13 and comments about NHTSA's CAFÉ rulemaking and its
14 relationship to gas prices. Document 802 responds briefly to
15 Document 797's request for a meeting. Document 805 is an
16 email from Graham to Silverberg, responding to Document 798 by
17 offering thoughts and opinions on CAFÉ rulemaking. Document
18 808 is an email from Calamas to Graham and also concerns
19 scheduling issues. The Court reviewed the documents *in camera*
20 and recommends that Documents 785, 788, 790, 795, 798, and 805
21 be found exempt from disclosure because they are pre-
22 decisional and deliberative and contains no reasonably
23 segregable factual information. The Court further recommends
24 that the original text contained in Documents 796, 797, 802,
25 807, and 808 be released, as the text of those emails contain
26 only logistical information, but that insofar as those
27 Documents contain embedded portions of Docs. 785, 788, 790,
28 795, 798, and 805, those portions of the Documents be left

1 redacted.

2
3 Document 786: This document, dated 3/31/04, is an email from
4 Bowie to Theroux. In this email, Bowie responds to an email
5 (Document 783, which has been released) and offers his
6 comments and thoughts regarding agency coordination in the
7 context of NHTSA's CAFÉ rulemaking. The Court reviewed the
8 document *in camera* and recommends that the document be found
9 exempt from disclosure because it is pre-decisional and
10 deliberative and contains no reasonably segregable factual
11 information.

12
13 Document 801, 804: This document, dated 3/31/04, is email
14 chain between Hannegan and Schiff. In this email chain,
15 Hannegan and Schiff discuss a draft memorandum for a briefing
16 of the President concerning fuel economy. The Court reviewed
17 the document *in camera* and recommends that the document be
18 found exempt from disclosure due to the presidential
19 communications privilege. Document 804, also dated 3/31/04,
20 is an email from Dr. Graham to Hannegan, in which Dr. Graham
21 responds to Document 801. OMB has redacted Document 801 from
22 804, but has otherwise released Document 804 in full. The
23 Court reviewed the documents *in camera* and recommends that the
24 redacted material be found exempt from disclosure due to the
25 presidential communications privilege.

26
27 Documents 823, 824: This document, dated 4/1/04, is an email
28 from Graham to Silverberg seeking comments on an internal CAFE

1 reform meeting that was held. Document 824, also dated
2 4/1/04, contains Silverberg's response. The Court reviewed
3 the documents *in camera* and recommends that the documents be
4 found exempt from disclosure because they are pre-decisional
5 and deliberative and contains no reasonably segregable factual
6 information.

7
8 Document 825, 839, 840: Document 825, dated 4/1/04, is an
9 email from Graham to Hennessey seeking comments on an internal
10 CAFÉ reform meeting that was held. Document 839, dated
11 4/4/04, is Hennessey's email response to Graham wherein
12 Hennessey responds by offering his observations and opinions
13 on the reform meeting. Document 840, dated 4/4/04, is an email
14 from Graham to Hennessey, giving feedback to Hennessey's
15 observations. The Court reviewed the documents *in camera* and
16 recommends that the documents be found exempt from disclosure
17 because they are pre-decisional and deliberative and contain
18 no reasonably segregable factual information.

19
20 Document 837, 838: Document 837, dated 4/2/04, is an email
21 from Hannegan to Silverberg. Document 838, also dated 4/2/04,
22 is an email from Silverberg back to Hannegan. In these
23 emails, both Silverberg and Hannegan responds to Document 837
24 and offers her own thoughts and opinions regarding CAFÉ
25 rulemaking. In this email, Hannegan responds to Document 798
26 and offers his thoughts and opinions about CAFE rulemaking in
27 relation to gas prices.

28 ///

1 Document 853: This document, dated 4/15/04, is an email from
2 Graham to Bolton and Kaplan. In this email, Graham forwards
3 his thoughts and comments about issues that arose in a CAFE
4 briefing with the President regarding advancements in
5 technologies for cars and light trucks. The Court reviewed
6 the document *in camera* and recommends that the document be
7 found exempt from disclosure because it is pre-decisional and
8 deliberative and contains no reasonably segregable factual
9 information.

10
11 Document 858, 859: This document is an email chain, dated
12 4/21/04, that contains three emails. The first email is from
13 Hannegan to Connaughton, and has been released. The next
14 email is from Graham to Hannegan, and the final email is from
15 Hannegan back to Graham. The last two emails have been
16 withheld. The redacted emails discuss the original email,
17 which contains the text of a published article on evolving
18 emissions standards. The redacted emails offer comments and
19 observations in response to the article and a question posed
20 by Graham. Document 859, also dated 4/21/04, is an email from
21 Graham to Toy in which Graham forwards Document 858. OMB has
22 redacted Document 858 from Document 859 but has otherwise
23 released Document 859 in full. The Court reviewed the
24 redacted material *in camera* and recommends that the withheld
25 material be found exempt from disclosure because it is pre-
26 decisional and deliberative and contains no reasonably
27 segregable factual information.

28 ///

EXCHANGE DOCUMENTS

Document 14: This email, dated 12/04/04, is from Toy to Graham. The only information redacted from the chain consists of personal email addresses and telephone numbers, which were withheld on privacy grounds. The email also contains an attachment, which was not provided to the Court for review. Accordingly, the Court recommends that the redacted portions of the document be withheld on privacy grounds, but that the remainder of the document, if it has not already been released, be released, as the document only contains factual material.

Document 22: This email chain, dated 12/20/04-12/22/04, is between Graham and Toy and consists of follow-up questions to Document 21 (not provided for review) regarding CAFE calculations and standards. The Court reviewed the redacted portions of the document *in camera* and recommends that the redacted portions of the document be found exempt from disclosure because they are pre-decisional and deliberative and contain no reasonably segregable factual material.

Document 23: This email chain, dated 12/22/04-12/27/04 is among Theroux, Toy, and Graham. This chain concerns the agency's thoughts on cost savings from better fuel economy; cost-effectiveness of different kinds of cars; and improvements in performance and safety. The Court reviewed the redacted portions of the document *in camera* and recommends that the redacted portions of the document be found exempt

1 from disclosure because they are pre-decisional and
2 deliberative and contain no reasonably segregable factual
3 material.

4
5 Document 24: This email chain, dated 12/22/04-12/27/04, is
6 between Graham and Toy. This chain discusses increase in fuel
7 efficiency and cost-effectiveness of different kinds of cars.
8 The Court reviewed the redacted portions of the document *in*
9 *camera* and recommends that the redacted portions of the
10 document be found exempt from disclosure because they are pre-
11 decisional and deliberative and contain no reasonably
12 segregable factual material.

13
14 Document 55: This email chain, dated 03/02/05, is between
15 Theroux and Hannegan. This chain discusses approaches on
16 setting CAFE standards made in the context of the development
17 of NHTSA's light truck CAFE rule. The Court reviewed the
18 redacted portions of the document *in camera* and recommends
19 that the redacted portions of the document be found exempt
20 from disclosure because they are pre-decisional and
21 deliberative and contain no reasonably segregable factual
22 material.

23
24 Document 121: This email chain, dated 05/13/05, is among
25 Kavanaugh, Graham, Hannegan, and Michel. In this chain,
26 Kavanaugh asks questions of Graham related to CAFE reform and
27 rulemaking in preparation for a briefing for the President.
28 This email and attachment relate to a memorandum for the

1 President and his top domestic policy advisors on the subject
2 of the development of NHTSA's light truck CAFE regulations.
3 The Court reviewed the documents *in camera* and recommends that
4 the documents be found exempt from disclosure because they are
5 pre-decisional and deliberative and contain no reasonably
6 segregable factual information and because they contain
7 information provided to the President or his top domestic
8 advisors at the President's request.

9
10 Documents 131-136: This email chain, dated 05/18/05-05/19/05,
11 is among Graham, Hannegan, Kaplan, Silverberg, Hennessey, and
12 Troy. The chain contains content regarding timing for talking
13 to interagency deputies and principals regarding the
14 development of NHTSA's light truck CAFE rule, stringency
15 levels, and economic/environmental impacts, and a plan for
16 presenting NHTSA's light truck CAFE rule to the President and
17 his top domestic advisors. The Court reviewed the documents
18 *in camera* and recommends that the documents be found exempt
19 from disclosure because they are pre-decisional and
20 deliberative and contain no reasonably segregable factual
21 information and because they contain information provided to
22 the President or his top domestic advisors at the President's
23 request.

24
25 Document 138: This email chain, dated 05/19/05, is among
26 Theroux, Toy, Feather, and Green. The chain discusses changes
27 in CAFE calculations in the context of NHTSA's proposed CAFE
28 rulemaking for light trucks and includes attachments (the

1 attachments were not provided to the Court for review). The
2 Court reviewed the document *in camera* and recommends that it
3 be found exempt from disclosure because it is pre-decisional
4 and deliberative and contains no reasonably segregable factual
5 information.

6
7 Document 141: This email chain, dated 05/18/05-05/23/05, is
8 among Hannegan, Connaughton, Silverberg, Kaplan, Hennessey,
9 and Troy. This chain discusses timing for conferring with
10 interagency deputies and principals about the development of
11 NHTSA's light truck CAFE rule and the plan for presenting it
12 to the President and his top domestic advisors. It
13 specifically outlines time frames for the recipients to turn
14 in their edits. This email chain contains reasonably
15 segregable factual material and the Court therefore recommends
16 that the portion of the chain discussing time frames for
17 editing should be disclosed.

18
19 Document 150: This email chain, dated 05/26/05, is among
20 Sharp, Graham, and Calamas. The email relates to edits made
21 to a CAFE memo for a meeting (the memo was not provided to the
22 Court for review). The Court reviewed the document *in camera*
23 and recommends that the document be disclosed because it
24 contains only factual material.

25
26 Document 154: This email chain, dated 05/31/05, is among
27 Graham, Hannegan, and Connaughton. The chain discusses an EOP
28 deputies' meeting on the subject of the development of NHTSA's

1 light truck CAFE rule. It outlines views of administrative
2 reform held by the recipients of the email chain. The Court
3 reviewed the document *in camera* and recommends that it be
4 found exempt from disclosure because it is pre-decisional and
5 deliberative and contains no reasonably segregable factual
6 information.

7
8 Document 158: This email, dated 06/02/05, is from Graham to
9 Hennessey, Kaplan, and Troy and discusses the pros and cons
10 for approaches to size-based CAFE reforms. The Court reviewed
11 the document *in camera* and recommends that it be found exempt
12 from disclosure because it is pre-decisional and deliberative
13 and contains no reasonably segregable factual information and
14 because the document contains information conveyed to the
15 President or his immediate advisors at the President's
16 request.

17
18 Document 159: This email, dated 06/02/05, is from Graham to
19 O'Donovan, Kaplan, and Troy. The email discusses the issue of
20 how size-based CAFE reform should be decided. The Court
21 reviewed the document *in camera* and recommends that it be
22 found exempt from disclosure because it is pre-decisional and
23 deliberative and contains no reasonably segregable factual
24 information and because the document contains information
25 conveyed to the President or his immediate advisors at the
26 President's request.

27 ///

28 ///

1 Document 161: This email chain, dated 06/02/05, is between
2 Hannegan and Graham. The chain relates to SAP's proposed
3 language for the "quasi-CAFE" provision and includes the
4 proposed language. The Court reviewed the document *in camera*
5 and recommends that it be found exempt from disclosure because
6 it is pre-decisional and deliberative and contains no
7 reasonably segregable factual information and because the
8 document contains information conveyed to the President or his
9 immediate advisors at the President's request.

10
11 Document 163: This email, dated 06/06/05, is from Hannegan to
12 Sykes. The email attaches a revised draft memorandum for
13 senior domestic policy advisors to the President on the
14 subject of the development of NHTSA's light truck CAFE rule
15 (but the attachment itself was not provided to the Court for
16 review). The Court reviewed the document *in camera* and
17 recommends that it be found exempt from disclosure because it
18 is pre-decisional and deliberative and contains no reasonably
19 segregable factual information and because the document
20 contains information conveyed to the President or his
21 immediate advisors at the President's request.

22
23 Document 164: This email chain, dated 06/05/05-06/06/05, is
24 among Hannegan, Sykes, Troy, Sharp, Hook, O'Donovan, and
25 Branch. This chain discusses time availability to meet about
26 a draft memorandum on CAFE reform and fuel economy standards.
27 The memorandum was attached to the email and was provided to
28 the Court for review. The Court reviewed the document (and

1 attached memorandum) *in camera* and recommends that it be found
2 exempt from disclosure because it is pre-decisional and
3 deliberative; however, scheduling information in the email
4 chain should be disclosed because it is reasonably segregable
5 factual material.

6
7 Document 172: This email, dated 06/07/05, is from Graham to
8 Kaplan and Branch. The email provides comments regarding a
9 meeting with senior domestic policy advisors to the President
10 on the subject of the development of NHTSA's light truck CAFE
11 rule in the context of fuel prices. The Court reviewed the
12 document *in camera* and recommends that it be found exempt from
13 disclosure because it is pre-decisional and deliberative and
14 contains no reasonably segregable factual information and
15 because the document contains information conveyed to the
16 President or his immediate advisors at the President's
17 request.

18
19 Document 173: This email chain, dated 06/07/05, is among
20 Graham, Troy, Sharp, Hook, Hennessey, Hannegan, Martin,
21 Perino, Marron, Kelley, Badger, McGrath, and Sykes. This
22 email chain concerns a deputies' meeting on CAFE reform and
23 discusses options for gauging support of the reforms. The
24 Court reviewed the document *in camera* and recommends that it
25 be found exempt from disclosure because it is pre-decisional
26 and deliberative and contains no reasonably segregable factual
27 information and because the document contains information
28 conveyed to the President or his immediate advisors at the

1 President's request.

2
3 Document 180: This email chain, dated 06/08/05-06/09/05, is
4 among Hook, Troy, Graham, Kaplan, and Calamas. This chain
5 concerns scheduling a Principals' meeting on CAFE reform. The
6 document also includes an attachment, which is a June 16 draft
7 memorandum from Hannigan to the White House that explores
8 proposals to amend CAFE. The Court reviewed the document *in*
9 *camera* and finds that the email chain contains reasonably
10 segregable factual material. The Court therefore recommends
11 that the portions of the chain discussing scheduling
12 information should be disclosed but that the email chain and
13 attachment otherwise be found exempt from disclosure because
14 they are pre-decisional and deliberative and because the
15 documents contain information conveyed to the President or his
16 immediate advisors at the President's request.

17
18 Document 181: This email chain, dated 06/09/05, is between
19 Graham, Troy, Sharp, McGrath, Connaughton, Martin, Marron,
20 Hennessey, Badger, and Hutto. The email discusses the costs
21 of the existing DOT CAFE program and options that the
22 Secretary proposed to the Principals in a previous meeting
23 concerning costs. The email also includes the June 16 draft
24 memorandum for DPC Principals (contained in Doc. 180). The
25 Court reviewed the document *in camera* and recommends that it
26 be found exempt from disclosure because it is pre-decisional
27 and deliberative and contains no reasonably segregable factual
28 information and because the document contains information

1 conveyed to the President or his immediate advisors at the
2 President's request.

3
4 Document 187: This email chain, dated 06/08/05-06/16/05, is
5 among Graham, Branch, Denise Sick, Cushman, Sykes, Cauthen,
6 Hannegan, Taylor Hughes, Jeremy Katz, Lee Simmons, Ritacco,
7 Aimee Violette, Carmen Ingwell, Williams, Heather Roebke,
8 Lindley Kratovil, Christian Woelk, Calamas, Sharp, Rice, Karla
9 Carnemark, Jessica Bennett, and Hook. This email chain
10 relates to scheduling the DPC meeting on CAFE and includes the
11 June 16 draft memorandum for DPC Principals (included in Doc.
12 180). The Court reviewed the document *in camera* and
13 recommends that, as stated above, the memorandum be found
14 exempt from disclosure because it contains information
15 conveyed to the President or his immediate advisors at the
16 President's request, and that the email chain also be found
17 exempt from disclosure because it is pre-decisional and
18 deliberative and contains no reasonably segregable factual
19 information, except for scheduling information, which should
20 be disclosed.

21
22 Document 188: This email chain, dated 06/16/2005, is among
23 Graham, Sharp, Hannegan, and Troy. This email chain relates
24 to the preparation of briefing materials for a presentation
25 for the President's most senior domestic policy advisors on
26 the subject of the development of NHTSA's light truck CAFE
27 rule. There is an attachment referenced in the text of the
28 emails, but it was not provided for review. The Court

1 reviewed the document *in camera* and recommends that the email
2 be disclosed because all it contains is logistical
3 information.

4
5 Document 189: This email, dated 06/16/05, is from Hannegan to
6 Sharp and Graham. The body of the email contains a revised
7 draft of the June 16 Memorandum for DPC Principals (see Doc.
8 180) and relates to DOT's CAFE reform proposal. The Court
9 reviewed the document *in camera* and recommends that it be
10 found exempt from disclosure because it is pre-decisional and
11 deliberative and contains no reasonably segregable factual
12 information and because the document contains information
13 conveyed to the President or his immediate advisors at the
14 President's request.

15
16 Document 192: The email chain, dated 06/17/05-06/20/05, is
17 among Marron, Graham, Hannegan, Hennessey, Hutto, McGrath,
18 Sharp, Kelley, Troy, Badger, Martin, and Perino. The email
19 chain has been partially released. The redacted portions of
20 the chain discuss options for reforming CAFE. The Court
21 reviewed the document *in camera* and recommends that it be
22 found exempt from disclosure because it is pre-decisional and
23 deliberative and contains no reasonably segregable factual
24 material.

25
26 Document 194: This email chain, dated 06/16/05-06/21/05, is
27 among Graham, Hannegan, and Troy. The chain comments on a
28 revised draft of the CAFE Principals' memorandum and includes

1 a draft of the June 16 memorandum. The Court reviewed the
2 document *in camera* and recommends that it be found exempt from
3 disclosure because it is pre-decisional and deliberative and
4 contains no reasonably segregable factual information and
5 because the document contains information conveyed to the
6 President or his immediate advisors at the President's
7 request.

8
9 Document 195: This email chain, dated 06/21/05, is among
10 Graham, Hannegan, Silverberg, Troy, McGrath, and Connaughton.
11 The email chain discusses reaching consensus on CAFE reform, a
12 four-year time horizon, and suggests various proposals. The
13 Court reviewed the document *in camera* and recommends that it
14 be found exempt from disclosure because it is pre-decisional
15 and deliberative and contains no reasonably segregable factual
16 information and because the document contains information
17 conveyed to the President or his immediate advisors at the
18 President's request.

19
20 Document 215: This email chain, dated 06/22/05, is among
21 Graham, Troy, and McGrath. This email chain discusses policy
22 options for CAFE in the context of gas prices. The Court
23 reviewed the document *in camera* and recommends that it be
24 found exempt from disclosure because it is pre-decisional and
25 deliberative and because the document contains information
26 conveyed to the President or his immediate advisors at the
27 President's request; however, the mileage data for the four
28 manufacturers is reasonably segregable factual information,

1 which should disclosed.

2
3 Document 229: This email chain, dated 06/23/05, is among
4 Graham, Marron, and Hannegan. This chain discusses the
5 difference between "range" and "no range" as well as an
6 opinion on the state of the industry. The Court reviewed the
7 document *in camera* and recommends that it be found exempt from
8 disclosure because it is pre-decisional and deliberative and
9 contains no reasonably segregable factual.

10
11 Document 234: This email chain, dated 06/22/05-06/23/05, is
12 among Hannegan, Graham, Theroux, Toy, and Haxthausen. The
13 document has been partially released. The redacted portion
14 discusses Hannegan's thoughts about the merits of certain
15 points in a white paper submitted by Environmental Defense and
16 made in the context of the development of NHTSA's light truck
17 CAFE rule. The Court reviewed the redacted portions of the
18 document *in camera* and recommends that the redacted portion be
19 found exempt from disclosure because it is pre-decisional and
20 deliberative and contains no reasonably segregable factual
21 material.

22
23 Document 296: This email chain, dated 06/27/05-06/28/05, is
24 between Graham and Toy. The redacted portions of this chain
25 discuss the issue of upsizing in the context of the
26 development of NHTSA's proposed CAFE rulemaking for light
27 trucks and consumer demand. The Court reviewed the document
28 *in camera* and recommends that it be found exempt from

1 disclosure because it is pre-decisional and deliberative and
2 contains no reasonably segregable factual material, except for
3 paragraph (1) of the June 26, 2005 email from Toy to Graham,
4 which is logistical scheduling information.

5
6 Document 305: This email chain, dated 06/29/05, is among
7 Kaplan, Graham, McGrath, Hennessey, Marron, Hannegan,
8 Connaughton, Troy, and Silverberg. The emails discuss how
9 current events would effect the CAFE policies and how members
10 of the email chain think CAFE standards should be set for
11 2008-2011. The Court reviewed the document *in camera* and
12 recommends that it be found exempt from disclosure because it
13 is pre-decisional and deliberative and contains no reasonably
14 segregable factual material, except for the first half of
15 Graham's June 29, 2005 email, which contains factual
16 information from newspapers disclosed as part of Document 315.

17
18 Document 306: This email chain, dated 06/29/05, is among
19 Marron, Hennessey, Graham, McGrath, Hannegan, Connaughton,
20 Troy, and Silverberg. The emails discuss how current events
21 would effect the CAFE policies and what the purpose of CAFE
22 should be regarding negative externalities. The Court
23 reviewed the document *in camera* and recommends that it be
24 found exempt from disclosure because it is pre-decisional and
25 deliberative and contains no reasonably segregable, except for
26 the first half of Graham's June 29, 2005 email, which contains
27 factual information from newspapers disclosed as part of
28 Document 315.

1 Document 308: This email chain, dated 06/29/05, is between
2 Theroux and Feather. The emails discuss technologies and the
3 percent of each manufacturers' fleet that complies with the
4 NHTSA standard. The Court reviewed the document *in camera* and
5 recommends that it be found exempt from disclosure because it
6 is pre-decisional and deliberative and contains no reasonably
7 segregable factual.

8
9 Documents 309, 310: This email chain, dated 06/29/05, is
10 among Theroux, Feather, Glassman, Calamita, and Wood. This
11 chain discusses technology net social benefits and how to set
12 unreformed CAFE standards. Document 309 is embedded in
13 Document 310 and is redacted, but Document 310 has otherwise
14 been released. The Court reviewed the document *in camera* and
15 recommends that it be found exempt from disclosure because it
16 is pre-decisional and deliberative and contains no reasonably
17 segregable factual.

18
19 Document 315: This email chain, dated 06/30/05-07/01/05, is
20 among Theroux, Neyland, Graham, Connaughton, Marron, McGrath,
21 Hennessey, Hannegan, Troy, and Silverberg. This chain
22 discusses what effects CAFE would have on gasoline prices and
23 oil consumption. The Court reviewed the document *in camera* and
24 recommends that it be found exempt from disclosure because it
25 is pre-decisional and deliberative and contains no reasonably
26 segregable factual.

27 ///

28 ///

1 Document 319: This email, dated 07/05/05-07/07/05, is from
2 McGrath to Graham. The email analyzes GM's financial
3 situation in the context of discussions about CAFE rulemaking.
4 The Court reviewed the document *in camera* and recommends that
5 it be found exempt from disclosure because it is pre-
6 decisional and deliberative and contains no reasonably
7 segregable factual.

8
9 Document 330: This email, dated 07/05/05, is from McGrath to
10 Graham. The email transmits Document 319 to Graham. The
11 portion that is document 319 is exempt from disclosure; the
12 remainder should be disclosed because it is logistical
13 information that is neither pre-decisional nor deliberative.

14
15 Documents 348-352: These are a series of email chains which
16 discuss answers to the questions posed by Graham in Document
17 353. The Court reviewed the documents *in camera* and recommends
18 that it be found exempt from disclosure because it is pre-
19 decisional and deliberative and contains no reasonably
20 segregable factual.

21
22 Document 353: In an email to Theroux and Toy, dated July 11,
23 2005, Graham questioned some statistical data about GM and
24 Ford's fuel efficiency. The Court reviewed the document *in*
25 *camera* and recommends that it be found exempt from disclosure
26 because it is pre-decisional and deliberative and contains no
27 reasonably segregable factual.

28 ///

1 Document 354: This email chain, dated 07/08/05-07/11/05, is
2 among Knuffman, Graham, Morrall, Theroux, Hunt, Mancini and
3 Toy. The emails exchange opinions on statistical data for a
4 certain car manufacturer in the context of CAFE standards.
5 The Court reviewed the document *in camera* and recommends that
6 it be found exempt from disclosure because it is pre-
7 decisional and deliberative and contains no reasonably
8 segregable factual.

9
10 Documents 355, 356, 363, 364, 365: This email chain, dated
11 07/11/05, is among Kratzke, Abraham, Katz, Dominic Mancini,
12 Graham, Theroux, Feather, Petrie, Toy, Hunt, and Wood. Most
13 of the documents have been released. The agency has withheld
14 email addresses and personal phone numbers on the ground of
15 privacy. The other redacted portions discuss statistical data
16 from 2002-2004, concerning various automakers and whether they
17 are in CAFE compliance. Questions are posed about whether the
18 data is correct, and the data is eventually explained and
19 corrected. The Court reviewed the document *in camera* and
20 recommends that it be found exempt from disclosure because it
21 is pre-decisional and deliberative and contains no reasonably
22 segregable factual material.

23
24 Document 368: This email chain, dated 07/14/05, is among
25 Graham, Knepper, and Connaughton. The email has been
26 partially released. The redacted portion discusses the policy
27 rationale of CAFE in relation to carbon intensity. The Court
28 reviewed the document *in camera* and recommends that it be

1 found exempt from disclosure because it is pre-decisional and
2 deliberative and contains no reasonably segregable factual
3 material.

4
5 Documents 372, 375: In this email, dated 07/14/05, Graham,
6 Hannegan and Connaughton discuss NHTSA's final CAFE rule for
7 model years 2005-2007 regarding NHTSA's treatment of
8 greenhouse gases. Document 375, also dated 07/14/05, contains
9 Graham forwarded this discussion to Knepper and Noe. The
10 Court reviewed the document *in camera* and recommends that it
11 be found exempt from disclosure because it is pre-decisional
12 and deliberative and contains no reasonably segregable factual
13 material.

14
15 Documents 373, 374: In these emails, dated 07/14/05, Graham,
16 Hannegan, and Knuffman discuss whether the RIA mentions or
17 contains sections dealing with greenhouse gases or climate
18 change issues. The Court reviewed the documents *in camera* and
19 recommends that they be released because they contain only
20 factual information.

21
22 Documents 376-379, 381, 384: This email chain, dated 07/14/05,
23 is among Graham, Hunt, Knuffman, Theroux, Toy, Hannegan,
24 Morrall, and Connaughton. Document 376, which is an email
25 from Graham to Knuffman, Theroux, Toy, and Hannegan is
26 consistently redacted throughout Documents 374, 377-379, 381,
27 and 384 but otherwise, the documents have been released in
28 full. Document 376 provides Graham's opinion of where

1 greenhouse gases, carbon emissions, and issues about climate
2 change are mentioned in the text of the RIA. Document 381
3 also redacts a comment made by Hannegan pertaining to his
4 thoughts on the agency's position on these issues. The Court
5 reviewed the documents *in camera* and recommends that the
6 redacted portions be released because they contain purely
7 factual material, except for the last sentence of Document
8 376, which is deliberative and pre-decisional.

9
10 Document 383: This email, dated 07/14/05, is from Graham to
11 Theroux. The email has been partially released. In the
12 redacted portion, Theroux answers the question posed by Graham
13 (that text has been released), explaining the context of an
14 inter-agency disagreement. The Court reviewed the document *in*
15 *camera* and recommends that it be found exempt from disclosure
16 because it is pre-decisional and deliberative and contains no
17 reasonably segregable factual material.

18
19 Documents 385, 392: This email chain, dated 07/14/05-07/15/05,
20 is among Graham, Calamas, Toy, Theroux, Mancini, Knuffman,
21 Hannegan, Knepper, and Hunt. The emails make suggestions on
22 the draft of CAFE RIA by proposing edits and rewrites to the
23 draft, including how to emphasize certain key points.
24 Document 385 is embedded in Document 392, and has been
25 redacted. Document 392 has otherwise been fully released.
26 The Court reviewed the document *in camera* and recommends that
27 it be found exempt from disclosure because it is pre-
28 decisional and deliberative and contains no reasonably

1 segregable factual material.

2
3 Documents 389-391: This email chain, dated 07/20/05, is among
4 Morrall, Knuffman, Toy, Hunt, Mancini, and Wood. The emails
5 discuss opinions and rewrites on sections of the NPRM and PRIA
6 related to CAFE rulemaking. The Court reviewed the documents
7 *in camera* and recommends that the documents be found exempt
8 from disclosure because they are pre-decisional and
9 deliberative and contain no reasonably segregable factual
10 material.

11
12 Documents 395, 396, 397, 399: This is an email chain, dated
13 07/22/05-07/26/05, among Graham, Calamas, Toy, Knuffman,
14 Mancini, Morrall, and Hunt, wherein Toy sends emails
15 discussing NHTSA's formal submittal and what edits NHTSA staff
16 did not include in the final submitted version. The Court
17 reviewed the documents *in camera* and recommends that the
18 documents be found exempt from disclosure because they are
19 pre-decisional and deliberative and contain no reasonably
20 segregable factual material.

21
22 Document 398: This is an email chain, dated 07/22/05-07/26/05,
23 among Graham, Knepper, Hannegan, Newell, Conover, Burnett, and
24 Toy. The documents have been partially released; however, the
25 agency has withheld email addresses and phone numbers on the
26 ground of privacy. The portion of the email that has been
27 withheld discusses thoughts on why the CAFE reform package was
28 structured in a particular manner. The Court reviewed the

1 document *in camera* and recommends that the document be found
2 exempt from disclosure because it is pre-decisional and
3 deliberative and contains no reasonably segregable factual
4 material.

5
6 Document 410: This is an email chain, dated 07/29/05-08/01/05,
7 among Graham, Newell, and Toy. The email forwards attachments
8 (not included in Document 410) and a thank-you is sent by the
9 receiver of the documents. The content of the emails is
10 logistical, not deliberative. The Court reviewed the document
11 *in camera* and recommends that the document be disclosed
12 because it contains no deliberative or pre-decisional content.

13
14 Document 411: In an email chain dated 07/29/05-08/01/05,
15 Theroux, Newell, and Toy. The email forwards attachments (not
16 included in Document 411) and a thank-you is sent by the
17 receiver of the documents. The content of the emails is
18 logistical, not deliberative. The Court reviewed the document
19 *in camera* and recommends that the document be disclosed
20 because it contains no deliberative or pre-decisional content.

21
22 Document 424: This email, dated 08/05/05, sent from Toy to
23 Abraham forwards attachments (not included in Document 424)
24 and requests to speak about the attachments at a later date.
25 The content of the emails is logistical, not deliberative.
26 The Court reviewed the document *in camera* and recommends that
27 the document be disclosed because it contains no deliberative
28 or pre-decisional content.

1 Documents 426, 428, 429: This email chain, dated 08/08/05-
2 08/09/05, is among Newell, Feather, Pickrell, Abraham, Green,
3 Theroux, and Toy. The agency is withholding phone numbers on
4 the grounds of privacy. The other portions of the documents
5 that have been withheld discuss CAFE discounting in the
6 context of auto financing. The Court reviewed the documents
7 *in camera* and recommends that the documents be found exempt
8 from disclosure because they are pre-decisional and
9 deliberative and contain no reasonably segregable factual
10 material.

11
12 Document 427: This email chain, dated 08/08/05, is among
13 Newell, Toy, Graham and Theroux, and discusses the CAFE-Volpe
14 Model peer reviews, providing thoughts and comments about
15 specific statements contained in those reviews. The Court
16 reviewed the documents *in camera* and recommends that the
17 documents be found exempt from disclosure because they are
18 pre-decisional and deliberative and contain no reasonably
19 segregable factual material.

20
21 Document 434: This email, dated 08/10/05, is from Blincoe to
22 Toy. The 8/10 email has been fully disclosed, however, the
23 document also contains an email, sent on 07/22/05 from Blincoe
24 to Toy, which has been redacted and withheld. The redacted
25 portion sets forth Blincoe's opinions on single and multiple-
26 vehicle crashes in the context of CAFE analysis. The Court
27 reviewed the document *in camera* and recommends that the
28 document be found exempt from disclosure because it is pre-

1 decisional and deliberative and contain no reasonably
2 segregable factual material.

3
4 Document 441: This email chain, dated 08/12/05, is among
5 Feather, Toy, Simons, and Abraham. The emails send drafts of
6 CAFE PRIA, which were not submitted for *in camera* review, and
7 discuss the changes in the drafts. The Court reviewed this
8 email chain *in camera* and recommends it be disclosed since the
9 information is factual.

10
11 Documents 442, 443: This email chain, dated 08/12/05, is among
12 Toy, Calamas, Hannegan, Newell, Feather, and Theroux. The
13 emails forward drafts of CAFE uncertainty analysis, which were
14 not submitted for *in camera* review. The content of the emails
15 is logistical, not deliberative. The Court reviewed the
16 emails *in camera* and recommends that they be disclosed because
17 they contain no deliberative or pre-decisional content.

18
19 Document 444: In an email chain dated 08/12/05, Toy,
20 Hannegan, Newell, Burnett, Conover, Bowers, Feather and
21 Theroux discussed the changes in the drafts of CAFE. The
22 drafts were not submitted for *in camera* review. The agency
23 asserts that the document contains intra-agency/inter-agency
24 pre-decisional, deliberative communications. However, the
25 Court reviewed the email chain *in camera* and recommends that
26 it be disclosed because it does not contain deliberative
27 content.

28 ///

1 Document 445: This email chain, dated 08/12/05, is among
2 Calamas, Toy, Feather, Simons, and Abraham. The emails
3 circulate NHTSA's drafts of CAFE PRIA, but do not discuss the
4 substance of the drafts. The Court reviewed the document *in*
5 *camera* and recommends that the document be disclosed because
6 it contains no deliberative or pre-decisional content.

7
8 Document 449: This email chain, dated 08/12/05-08/15/05, is
9 among Toy, Hannegan, Newell, Simons, Abraham, Feather, and
10 Theroux. The emails circulate NHTSA's drafts of CAFE PRIA, but
11 do not discuss the substance of the drafts. The Court
12 reviewed the document *in camera* and recommends that the
13 document be disclosed because it contains no deliberative or
14 pre-decisional content.

15
16 Document 455: This email, dated 08/17/05, was sent by Toy
17 Arbuckle. In the email, Toy forwards a draft of the CAFE
18 reform, but does not discuss the draft. The Court reviewed
19 the document *in camera* and recommends that the document be
20 disclosed because it contains no deliberative or pre-
21 decisional content.

22
23 Document 463: This email, dated 08/18/05, is from Newell to
24 Toy. The email discusses whether NHSTA should adjust
25 assumptions in some of its price models as they relate to CAFE
26 reform. The Court reviewed the document *in camera* and
27 recommends that the document be found exempt from disclosure
28 because it is pre-decisional and deliberative and contains no

1 reasonably segregable factual material.

2
3 Document 485: This email chain, dated 08/18/05-08/19/05, is
4 among Toy, Feather, Simons, Abraham, Theroux, Wood, Calamita
5 and George Feygin. The emails forward a draft version of CAFÉ
6 PRIA and briefly discuss the difference between the sent draft
7 and an earlier draft. The Court reviewed the document *in*
8 *camera* and recommends that the document be disclosed because
9 it contains no deliberative content.

10
11 Document 486: This email chain, dated 07/29/05-08/19/05, is
12 among Toy, Theroux, and Newell. The email forwards a draft of
13 the CAFÉ preamble and other documents (not included for
14 review). The Court reviewed the document *in camera* and
15 recommends that the document be disclosed because it contains
16 no deliberative content.

17
18 Document 513: This email chain, dated 08/18/05-08/19/05, is
19 among Simons, Toy, Theroux, Feather, Abraham, Wood, Calamita,
20 and George Feygin. The emails have been partially released.
21 The redacted portions of the emails suggest edits and rewrites
22 to specific sections of the CAFÉ regulations. The Court
23 reviewed the document *in camera* and recommends that the
24 redacted portions of the document be found exempt from
25 disclosure because they are pre-decisional and deliberative
26 and contain no reasonably segregable factual material.

27 ///

28 ///

1 Document 518: This email, dated 08/22/05, was sent by Wood to
2 Toy, Theroux, Glassman, Rosen, and Runge. In the email, Wood
3 sends copies of a draft of the CAFÉ regulations and of the EA
4 (the attachments were not provided for review). With the
5 exception of the personal email address of Wood, which the
6 agency has withheld on privacy grounds, the email has been
7 released. The email does not contain any deliberative
8 content, as the drafts themselves were not attached to
9 Document 518.

10
11 Documents 519, 521: This email chain, dated 08/23/05, is among
12 Branch, Graham, and Harrington. In this email, Harrington
13 forwards a CAFÉ power point presentation. The emails have
14 been partially released. The redacted portions of the emails
15 discuss whether to forward the presentation to other
16 individuals or agencies. Document 521 has been partially
17 released, but has redacted the embedded portion of Document
18 519 that is contained within the chain. The Court reviewed
19 the documents *in camera* and recommends that the redacted
20 portions of the document be found exempt from disclosure
21 because they are pre-decisional and deliberative and contain
22 no reasonably segregable factual material.

23
24 Documents 529, 530: This email chain, dated 08/24/05, is from
25 Newell to Graham and Toy. The email discusses the rulemaking
26 preamble for CAFÉ model years 2008-2011 and includes an
27 excerpt from the CAFÉ preamble found on the NHTSA website.
28 Document 530 contains Document 529 (redacted) as well as some

1 additional comments by Toy (related to the text of the
2 preamble), which have also been redacted. The Court reviewed
3 the documents *in camera* and recommends that the redacted
4 portions of the document be found exempt from disclosure
5 because they are pre-decisional and deliberative and contain
6 no reasonably segregable factual material; however, the Court
7 recommends that the excerpt from the NHTSA website in Newell's
8 August 24 email be disclosed, as it contains factual material.

9
10 Document 531: This email chain, dated 08/25/05, is among
11 Graham, Newell, Bolten, and Kaplan. The email discusses
12 specific stakeholder reactions to DOT's CAFÉ reform plan and
13 whether those entities are supportive of the plan or likely to
14 oppose it. The Court reviewed the document *in camera* and
15 recommends that the redacted portions of the document be found
16 exempt from disclosure because they are pre-decisional and
17 deliberative and contain no reasonably segregable factual
18 material.

19
20 Document 537: This email chain, dated 08/31/05, is among
21 Graham, Newell, and Toy. This document has been partially
22 released. The redacted portion of the document contain's
23 Toy's reactions to how NHTSA has responded to peer reviews of
24 CAFÉ and issues that NHTSA should consider addressing as per
25 the peer review feedback. The Court reviewed the document *in*
26 *camera* and recommends that the redacted portions of the
27 document be found exempt from disclosure because they are pre-
28 decisional and deliberative and contain no reasonably

1 segregable factual material.

2
3 Document 542: This email, dated 09/20/05, is among Graham,
4 Newell, Theroux, and Toy. The withheld email is from Newell,
5 wherein Newell discusses an error contained in an assessment
6 of consumer CAFÉ benefits and what is being done to correct
7 that error. The Court reviewed the document *in camera* and
8 recommends that the document be found exempt from disclosure
9 because it is pre-decisional and deliberative and contains no
10 reasonably segregable factual material.

11
12 Document 543: This email, dated 09/20/05, is among Theroux,
13 Anderson, Graham, Newell, Toy, and Branch. The email has been
14 partially released. Some personal email addresses and phone
15 numbers have been withheld on privacy grounds. The other
16 redacted portion of the email discusses modeling
17 miscalculations concerning the rulemaking for light trucks and
18 identifies the potential miscalculation. The Court reviewed
19 the document *in camera* and recommends that the redacted
20 portions of the document be found exempt from disclosure
21 because they are pre-decisional and deliberative and contains
22 no reasonably segregable factual material, except for the last
23 paragraph of Anderson's September 20, 2005 email, which
24 contains only logistical information not subject to exemption.

25
26 Document 544: This email, dated 09/22/05, is among Graham,
27 Newell, Toy, Theroux, and Branch. The email has been
28 partially released. The redacted portion of the email

1 discusses the schedule for release of 2005 energy statistics
2 and EIA gas-price projections, and comments on the projections
3 in the context of NHSTA CAFÉ rulemaking. The Court reviewed
4 the document *in camera* and recommends that the document be
5 found exempt from disclosure because it is pre-decisional and
6 deliberative and contains no reasonably segregable factual
7 material.

8
9 Document 547: This email chain, dated 08/29/05-09/26/05, is
10 between Graham and Toy. The document has been partially
11 released. Only a small portion of the document has been
12 withheld. The redacted portion is a question that Graham
13 poses to Toy concerning the effect of the tax-credit
14 provisions for fuel-efficient vehicles and CAFÉ rulemaking.
15 The Court reviewed the document *in camera* and recommends that
16 the redacted portion of the document be found exempt from
17 disclosure because it is pre-decisional and deliberative and
18 contains no reasonably segregable factual material.

19
20 Document 549: This email chain, dated 08/31/05-09/27/05, is
21 among Calamas, Toy, and Dr. Crandall. This email chain
22 discusses the CAFÉ reform package and with the exception of a
23 personal telephone line extension, withheld on privacy
24 grounds, the document appears to have been released in full.
25 The document contains no pre-decisional or deliberative
26 content.

27 ///

28 ///

1 Document 553: This email chain, dated 09/30/05-10/03/05, is
2 among Graham, Toy, Hannegan, Connaughton, and Hennessey. This
3 chain concerns reactions and possible edits to an interim
4 report on energy policy and motor vehicle fuel economy. In
5 the emails, the positives and negatives of various policy
6 options are discussed. The Court reviewed the document *in*
7 *camera* and recommends that the redacted portions of the
8 document be found exempt from disclosure because they are pre-
9 decisional and deliberative and contain no reasonably
10 segregable factual material.

11
12 Document 554: This email, dated 10/03/05, is from Pickrell to
13 Toy. The email attaches a document (not included for review)
14 and notes a potential inconsistency to be reviewed. The Court
15 reviewed the document *in camera* and recommends that the
16 redacted portion of the document be found exempt from
17 disclosure because it is pre-decisional and deliberative and
18 contains no reasonably segregable factual material.

19
20 Document 555: This email, dated 10/04/05, is from Newell to
21 Graham. In the email, Newell seeks Graham's personal opinion
22 regarding NEC's views on CAFÉ. The Court reviewed the
23 document *in camera* and recommends that the redacted portion of
24 the document be found exempt from disclosure because it is
25 pre-decisional and deliberative and contains no reasonably
26 segregable factual material.

27 ///

28 ///

1 Document 556: This email, dated 10/04/05, is from Toy to
2 Graham. The email includes a table that lists calculations of
3 gas savings from 2005-present and estimations for 2008-2011.
4 The Court reviewed the document *in camera* and recommends that
5 the redacted portion of the document be found exempt from
6 disclosure because it is pre-decisional and deliberative and
7 contains no reasonably segregable factual material.

8
9 Documents 557, 558, 559: This email chain, dated 10/11/05, is
10 among Branch, Graham, Noe, and Hannegan. The emails circulate
11 a draft of a Deputies Memo that concerns improving fuel
12 economy. The Court reviewed the document *in camera* and
13 recommends that the text of the memo, contained in Graham's
14 October 11, 2005 email, be found exempt from disclosure
15 because it is pre-decisional and deliberative and contains no
16 reasonably segregable factual material. The Court further
17 recommends, however, that the other emails that merely request
18 comments and direct people to edits be released, as those
19 emails do not contain pre-decisional or deliberative content.

20
21 Documents 564, 565: This email chain, dated 10/19/05-
22 10/20/05, is between Newell and Graham. This chain discusses
23 a possible omitted CAFÉ cost and economic discount rates and
24 how they effect various projections and models. The Court
25 reviewed the documents *in camera* and recommends that the
26 redacted portions of the documents be found exempt from
27 disclosure because they are pre-decisional and deliberative
28 and contains no reasonably segregable factual material.

1 Documents 572, 576: These email chains, dated 10/27/05-
2 10/28/05, are among Theroux, Feather, Toy, Abraham, Newell,
3 Calamas and Graham. This chain forwards a JEEM paper on CAFÉ,
4 which was not submitted for *in camera* review. The agency has
5 withheld a personal phone number on privacy grounds. The
6 Court reviewed the document *in camera* and recommends that,
7 with the exception of the redacted telephone number, the
8 document be disclosed because it contains no deliberative or
9 pre-decisional content.

10
11 Document 578: This email chain, dated 10/30/05-10/31/05, is
12 between Newell and Graham. This chain concerns problems with
13 a handout that was distributed regarding CAFÉ. The Court
14 reviewed the redacted portion of the document *in camera* and
15 recommends that the redacted portions of the document be found
16 exempt from disclosure because they are pre-decisional and
17 deliberative and contains no reasonably segregable factual
18 material.

19
20 Document 579: This email, dated 11/01/05, is from Connaughton
21 to Rove, Gerson, Hubbard, and Bernanke. In this email,
22 Connaughton corrects a misimpression on the CAFÉ Feebate
23 program and how the program effects rural light truck drivers.
24 The Court reviewed the document *in camera* and recommends that
25 it be found exempt from disclosure because it is pre-
26 decisional and deliberative and contains no reasonably
27 segregable factual information and because the document
28 contains information conveyed to the President or his

1 immediate advisors at the President's request.

2
3 Document 581: This email chain, dated 10/27/05-11/01/05, is
4 among Graham, Toy, and Newell. This email chain forwards an
5 attached CAFÉ Reform document (the attachment was not included
6 for review). The Court reviewed the document *in camera* and
7 recommends that the document be disclosed because it contains
8 no deliberative or pre-decisional content.

9
10 Documents 582, 583: This email chain, dated 11/03/05, is from
11 Branch to Graham and Toy. The email attaches a draft of a
12 summary of CAFÉ talking points to pass on to the Vice
13 President and asks for responsive updates. The attachment was
14 not included for review by the Court. The Court reviewed the
15 documents *in camera* and recommends that they be found exempt
16 from disclosure because they are pre-decisional and
17 deliberative and contain no reasonably segregable factual
18 information and because the documents contain information
19 conveyed to the President or his immediate advisors at the
20 President's request.

21
22 Document 587: This email, dated 11/07/05, is from Theroux to
23 Feather, Toy, Newell, and Pickrell. The email contains an
24 excerpt from an article regarding gasoline taxes and
25 externalities. The email includes the web address of the
26 paper, but redacts the pasted portion of the document. The
27 Court reviewed the redacted portion of the document *in camera*
28 and recommends that the redacted portions of the document be

1 found exempt from disclosure because they are pre-decisional
2 and deliberative and contains no reasonably segregable factual
3 material.

4
5 Document 589: This email, dated 11/14/05, was sent from Katz
6 to McMillin and Hannegan. The email chain concerns an
7 upcoming Principals meeting regarding a draft memorandum on
8 Energy Policy Options for 2006 for a presentation to the
9 President and his domestic policy advisors on the subject of
10 development of NHTSA's light truck CAFE rule. The draft
11 memorandum is attached to the email and was attached for the
12 Court's review. The Court reviewed the document *in camera* and
13 recommends that the memorandum be found exempt from disclosure
14 because it is pre-decisional and deliberative and contains no
15 reasonably segregable factual information and because the
16 memorandum contains information conveyed to the President or
17 his immediate advisors at the President's request. The email,
18 however, contains segregable information, and with the
19 exception of the statement concerning the purpose of the
20 meeting, the Court recommends that the email be disclosed.

21
22 Document 590: This email, dated 11/16/05, is from Theroux to
23 Toy and Asalone. Theroux forwards documents to Toy and
24 Asalone. The document appears to have been released in full,
25 with the exception of Theroux's email address, which has been
26 redacted based on privacy grounds. The Court reviewed the
27 document *in camera* and recommends that the personal email
28 address not be disclosed; otherwise, there is nothing

1 deliberative or pre-decisional about the document.

2
3 Documents 603, 604: This email chain, dated 12/14/05, is among
4 Graham, Hannegan, Glassman, and Newell. In this chain,
5 Hannegan inquires about a reform proposal to passenger cars,
6 and the rest of the individuals included on Hannegan's email
7 respond to Hannegan's inquiry with thoughts and opinions. The
8 Court reviewed the redacted portion of the document *in camera*
9 and recommends that the redacted portions of the documents be
10 found exempt from disclosure because they are pre-decisional
11 and deliberative and contain no reasonably segregable factual
12 material.

13
14 Document 605: This email chain, dated 12/14/05, is among
15 Graham, Toy, and Calamas. This chain concerns issues to be
16 discussed at an internal meeting on CAFÉ standards and oil
17 savings. The Court reviewed the redacted portion of the
18 document *in camera* and recommends that the redacted portion of
19 the document be found exempt from disclosure because it is
20 pre-decisional and deliberative and contains no reasonably
21 segregable factual material.

22
23 Documents 606, 607: This email chain, dated 12/14/05, is
24 among Newell, Graham, Calamas, Toy, Dryden, and Hannegan.
25 This chain discusses standards of conservation and oil savings
26 legislation and provides opinions about what the legislative
27 outlook will be for CAFÉ standards. Document 606 is embedded
28 in Document 607, but Document 607 has otherwise been fully

1 released. The Court reviewed the redacted portion of the
2 documents *in camera* and recommends that the redacted portions
3 of the documents be found exempt from disclosure because they
4 are pre-decisional and deliberative and contain no reasonably
5 segregable factual material.

6
7 Document 609: This email chain, dated 12/15/05, is among
8 Theroux, Toy, and Newell. This chain discusses CAFE comments.
9 The document has been partially released. Personal email
10 addresses have been withheld on privacy grounds. The Court
11 reviewed the redacted portion of the document *in camera* and
12 recommends that redacted portion of the documents be found
13 exempt from disclosure, except for the first line of the
14 withheld email, because they are pre-decisional and
15 deliberative and contain no reasonably segregable factual
16 material.

17
18 Document 610: This email chain, dated 12/14/05-12/15/05, is
19 among Toy, Graham, and Calamas. The email concerns an
20 upcoming meeting, and includes an attachment, which was not
21 provided to the Court for review. The only information
22 redacted from the emails is the subject matter. The Court
23 reviewed the redacted portion of the document *in camera* and
24 recommends that the redacted portion be disclosed, as the
25 subject matter of the emails does not contain any pre-
26 decisional or deliberative material.

27 ///

28 ///

1 Document 611: This email, dated 12/15/05, is from Graham to
2 Newell and Hannegan. The email concerns possible shifts in
3 NHTSA's cost estimates. The Court reviewed the document *in*
4 *camera* and recommends that the document be found exempt from
5 disclosure because it is pre-decisional and deliberative and
6 contains no reasonably segregable factual material.

7
8 Document 624, 625: This email chain, dated 12/19/05, is
9 between Theroux and Toy. This chain discusses ANPRM comments
10 on "continuous vs bins." The document has been partially
11 released. The redacted portions of the email include email
12 addresses, withheld on privacy grounds, as well as comments by
13 Theroux on ANPRM's comments and the concerns he has with them.
14 The Court reviewed the document *in camera* and recommends that
15 the document be found exempt from disclosure because it is
16 pre-decisional and deliberative and contains no reasonably
17 segregable factual material.

18
19 Document 627: This email chain, dated 12/22/05, is between
20 James Foster, Newell, and Hennessey. This chain discusses
21 continuous CAFÉ and continuous Feebate similarities. The
22 Court reviewed the document *in camera* and recommends that the
23 document be found exempt from disclosure because it is pre-
24 decisional and deliberative and contains no reasonably
25 segregable factual material.

26
27 Document 630: This email chain, dated 12/22/05-01/03/06, is
28 among Toy, Newell, and Graham. This chain discusses ways to

1 improve the Continuous Feebate system regarding different
2 technologies. The document has been partially released.
3 Personal email addresses have been withheld on privacy
4 grounds. The Court reviewed the document *in camera* and
5 recommends that the document be found exempt from disclosure
6 because it is pre-decisional and deliberative and contains no
7 reasonably segregable factual material.

8
9 Document 631: This email chain, dated 01/11/06, is among
10 Hannegan, Katz, Graham, and Sharp. The emails concern an
11 effort to collect current information on CAFÉ proposals for a
12 memorandum. The court reviewed the document *in camera* and
13 concludes the document contains only factual material and
14 should be disclosed. The Court reviewed the document *in*
15 *camera* and recommends that the document be found exempt from
16 disclosure because it is pre-decisional and deliberative and
17 contains no reasonably segregable factual information and
18 because the document contains information conveyed to the
19 President or his immediate advisors at the President's
20 request.

21
22 Documents 632, 633: These documents are email chains, dated
23 01/11/06, among Toy, Katz, Hannegan, and Sharp. This chain
24 discusses estimates on potential savings from CAFÉ for a draft
25 memorandum being prepared for a presentation to the President
26 and his top domestic policy advisors. The Court reviewed the
27 document *in camera* and recommends that the document be found
28 exempt from disclosure because it is pre-decisional and

1 deliberative and contains no reasonably segregable factual
2 information and because the document contains information
3 conveyed to the President or his immediate advisors at the
4 President's request.

5
6 Documents 635, 636, 637: This email chain, dated 01/11/06, is
7 among Newell, Toy, Hannegan and Graham. The chain discusses a
8 table with estimated levels of fleetwide reform for CAFÉ.
9 They include a Powerpoint presentation entitled CAFÉ-Feebates.
10 The Court reviewed the documents *in camera* and recommends that
11 they be found exempt from disclosure because they are pre-
12 decisional and deliberative and contain no reasonably
13 segregable factual material, and because they contain
14 information conveyed to the President or his immediate
15 advisors at the President's request.

16
17 Document 639: This email chain, dated 01/19/06, is among
18 Connaughton, Rove, McMillin, Jeremy Katz, Allan Hubbard,
19 Hennessey, Hannegan, Dan Bartlett, Bernanke, Bolten, Patel,
20 and Hutto. This chain discusses whether to present CAFÉ
21 related thoughts for the State of the Union or other energy
22 speeches. The Court reviewed the documents *in camera* and
23 recommends that they be found exempt from disclosure because
24 they are pre-decisional and deliberative and contain no
25 reasonably segregable factual material, and because they
26 contain information conveyed to the President or his immediate
27 advisors at the President's request.

28 ///

1 Document 640: These documents are email chains, dated
2 01/19/06, from Graham to Wolff. The emails concern CAFÉ
3 reform through 2015 and propose suggestions for reform. The
4 Court reviewed the document *in camera* and recommends that it
5 be found exempt from disclosure because it is pre-decisional
6 and deliberative and contains no reasonable segregable factual
7 material.

8
9 Document 641: This email chain, dated 01/19/06, is among
10 Newell, Graham, Connaughton, and Hannegan. This chain
11 discusses whether to present CAFÉ related thoughts and
12 standards for light trucks for the State of the Union or other
13 energy speech. The Court reviewed the document *in camera* and
14 recommends that it be found exempt from disclosure because it
15 is pre-decisional and deliberative and contains no reasonable
16 segregable factual material.

17
18 Document 642: This email chain, dated 01/20/06, is among
19 Hannegan, Graham, and Anderson. This chain sets forth ways to
20 edit a memorandum about CAFÉ options. The Court reviewed the
21 documents *in camera* and recommends that they be found exempt
22 from disclosure because they are pre-decisional and
23 deliberative and contain no reasonably segregable factual
24 material, and because they contain information conveyed to the
25 President or his immediate advisors at the President's
26 request.

27 ///

28 ///

1 Document 647: This email chain, dated 02/13/06-02/14/06, is
2 between Petrie and Menchik. This chain discusses time
3 pressure in getting out an informal CAFÉ rulemaking draft.
4 The Court reviewed the document *in camera* and recommends that
5 it be found exempt from disclosure because it is pre-
6 decisional and deliberative and contains no reasonable
7 segregable factual material.

8
9 Document 650: This email chain, dated 02/17/06-02/22/06, is
10 among Sharp, Branch, Menchik, Toy, Arbuckle, Morrall, Newell,
11 Hannegan, and Knepper. This chain circulates a draft "Light
12 Truck CAFÉ Economic Analysis" memorandum for the President and
13 his top domestic policy advisors; however, the draft
14 memorandum was not submitted for the Court to review. The
15 Court reviewed the document *in camera* and recommends that it
16 be released, as the email chain contains factual scheduling
17 information and should be disclosed.

18
19 Document 659: This email chain, dated 02/24/06-02/26/06, is
20 among Newell, Branch, and Anderson. This email chain has an
21 attachment entitled "CAFÉ Final Notice Feb 14 - CEA Comments"
22 not submitted for *in camera* review. The Court reviewed the
23 document *in camera* and recommends that it be found exempt from
24 disclosure because it is pre-decisional and deliberative and
25 contains no reasonable segregable factual material.

26
27 Document 685: This email, dated 03/03/06, is among Abraham,
28 Menchik, Theroux, and Toy. This chain discusses contact

1 information while sender is abroad. The email forwards two
2 attachments, neither of which were submitted for *in camera*
3 review. The Court reviewed the document *in camera* and
4 recommends that the document be disclosed, unless the phone
5 number would implicate privacy concerns, because it contains
6 only factual material.

7
8 Documents 686, 688, 689: These email chains, dated 03/02/06-
9 03/03/06 are between Menchik, Konove, Neyland, Donovan
10 Robinson and Sandoli. The chains attach several documents
11 that concern the draft CAFE rulemaking, regulatory impact
12 analysis, environmental assessment of DOT/NHTSA's final
13 rulemaking on CAFÉ standards for light trucks, a comparison of
14 fuel savings in the proposed and final draft rule, and a
15 description of the uncertainty analysis. The attachments were
16 not submitted for *in camera* review. The Court reviewed the
17 email chains *in camera* and recommends that the email chain be
18 disclosed, as the emails contain only factual material.

19
20 Documents 690, 691: These emails, dated 03/06/06, are from
21 Branch to Arbuckle and Theroux. The emails concern an
22 attached document, CAFÉ FINAL RULE 022806 ONE PAGER, for use
23 at a meeting that day. The attachment was not submitted for
24 *in camera* review. The Court reviewed the emails *in camera* and
25 recommends that they be disclosed because they contain only
26 factual material.

27 ///

28 ///

1 Document 694: This email chain, dated 03/07/06, is between
2 Kaplan and Theroux. This chain contains Theroux's answers to
3 two questions posed by Kaplan regarding manufacturer
4 compliance with unreformed and reformed CAFÉ standards as
5 well as how much CAFÉ standards have been raised. The Court
6 reviewed the document *in camera* and recommends that it be
7 found exempt from disclosure because it is pre-decisional and
8 deliberative and contains no reasonable segregable factual
9 material.

10
11 Document 695: This email chain, dated 03/07/06, is among
12 Fairweather, Hannegan, Neyland, Sharp, Newell, Jeremy Katz,
13 Epifani, Liang, Fiddelke, Martin, Perino, Joel Harris, Grant,
14 Hutto, Michelle Hendrix, Jones, Russell, Knepper, Milburn,
15 Stewart, Cote, Anderson, Haun and Mertens. This chain
16 transmits a document, CAFÉ FINAL RULE 022806 ONE PAGER, for
17 review. The attachment was not submitted for *in camera*
18 review. The Court reviewed document 695 *in camera* and
19 recommends that the document be disclosed because it contains
20 only factual information.

21
22 Document 710: This email chain, dated 03/14/06, is among
23 Branch, Arbuckle, and Hannegan. This chain has two documents
24 attached to it, but the attachments were not submitted for *in*
25 *camera* review. The Court reviewed the document *in camera* and
26 concludes the document contains only factual material and
27 recommends that it be disclosed.

28 ///

1 Document 711: By email dated 03/14/06, Branch transmitted to
2 Sharp comments and edits on a document, which was not
3 submitted for *in camera* review. The Court reviewed the email
4 *in camera* and recommends that the email be disclosed because
5 it contains only factual material.

6
7 Document 712: By email dated 03/14/06, Menchik sent two
8 documents to Mannix and copied Theroux and Toy. The
9 documents attached to the emails were not submitted for *in*
10 *camera* review. The Court reviewed the email *in camera* and
11 recommends that it be disclosed because it contains only
12 factual material.

13
14 Document 716: In an email dated 03/14/06, Menchik sent one
15 document to Mancini and Theroux. The attached document has
16 not been submitted for *in camera* review. The Court reviewed
17 the email *in camera* and recommends that it be disclosed
18 because it contains only factual material.

19
20 Document 732: In an email chain dated 02/24/06, Menchik,
21 Branch, Arbuckle, Morrall, and Hunt discussed upcoming NHTSA
22 rulemaking. The email contained an attachment that was not
23 submitted to the Court for *in camera* review. The Court
24 reviewed the email *in camera* and recommends that it be found
25 exempt from disclosure because it is pre-decisional and
26 deliberative and contains no reasonable segregable factual
27 material.

28 ///

1 Document 753: This email chain, dated 03/27/06-03/28/06, is
2 among Branch, Menchik, Knepper, Theroux, Thompson, Wehrum,
3 Burnett and Wood. The emails discuss their opinions on the
4 draft of CAFÉ. The Court reviewed the document *in camera* and
5 recommends that it be found exempt from disclosure because it
6 is pre-decisional and deliberative and contains no reasonable
7 segregable factual material, except for the factual material
8 in Wood's email on page 2 of the document, which the Court
9 recommends should be disclosed.

10
11 Document 769: In an email dated 03/28/06, Branch and
12 Harrington discussed their opinions on the final draft of
13 CAFÉ. The Court reviewed the document *in camera* and
14 recommends that it be found exempt from disclosure because it
15 is pre-decisional and deliberative and contains no reasonable
16 segregable factual material.

17
18 Document 770: In an email dated 03/28/06, Branch provides
19 Harrington her comments on the final draft of CAFÉ. The
20 Court reviewed the document *in camera* and recommends that it
21 be found exempt from disclosure because it is pre-decisional
22 and deliberative and contains no reasonable segregable
23 factual material.

24
25 Document 771: This email chain, dated 03/27/06-03/28/06, is
26 among Branch, Menchik, Knepper, Theroux, Chet Thompson, Bill
27 Wehrum, and Burnett. In the emails, the various individuals
28 provide their opinions on the draft of CAFÉ. The Court

1 reviewed the document *in camera* and recommends that it be
2 found exempt from disclosure because it is pre-decisional and
3 deliberative and contains no reasonable segregable factual
4 material, except for the factual material in Wood's email on
5 page 1, which the Court recommends be disclosed.

6
7 Document 781: This email chain, dated 08/01/05, is among
8 Newell, Toy, and Therous, wherein Newell sent a document,
9 which has not been submitted for *in camera* review. The Court
10 reviewed the email *in camera* and recommends that it be
11 disclosed because it contains only factual material.

12
13 Document 783: This email chain, dated 08/20/04-08/26/04, is
14 among Graham, Toy, and Felrice. The emails discuss various
15 issues that may impact CAFÉ reform. The Court reviewed the
16 document *in camera* and recommends that it be found exempt
17 from disclosure because it is pre-decisional and deliberative
18 and contains no reasonable segregable factual material.

19
20 Document 784: This email chain, dated 12/03/04-12/06/04, is
21 among Graham, Calamas, and Hannegan. The emails discuss the
22 timing of CAFÉ reform. The Court reviewed the document *in*
23 *camera* and recommends that it be found exempt from disclosure
24 because it is pre-decisional and deliberative and contains no
25 reasonable segregable factual material.

26
27 Document 793: This email chain, dated 02/10/05-02/11/05, is
28 among Theroux, Neyland, Parry ,and Portney. The emails

1 discuss whether Portney was misquoted in the public report on
2 mistaken identity. The Court reviewed the document *in camera*
3 and recommends that it be disclosed, because it is not
4 deliberative.

5
6 Document 801: This email chain, dated 03/28/06, is among
7 Abraham, Branch, Harrington, Turmail, and Glassman. The
8 emails exchange opinions on the final draft of CAFÉ.
9 Personal telephone numbers have been withheld on privacy
10 grounds. The Court reviewed the document *in camera* and
11 recommends that it be found exempt from disclosure because it
12 is pre-decisional and deliberative and contains no reasonable
13 segregable factual material.

14
15 Document 803: In an email dated 04/14/05, Toy asks Graham to
16 comment on an outline of talking points for Secretary
17 Bodman's briefing on CAFÉ reform. The Court reviewed the
18 document *in camera* and recommends that it be found exempt
19 from disclosure because it is pre-decisional and deliberative
20 and contains no reasonable segregable factual material.

21
22 Document 810: In an email dated 05/24/05, Toy, Graham and
23 Theroux discussed a draft memo on the cost implications of
24 CAFÉ reform. The Court reviewed the document *in camera* and
25 recommends that it be found exempt from disclosure because it

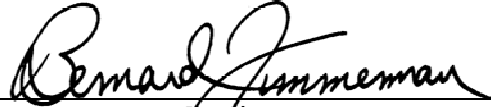
26 ///

27 ///

28 ///

1 is pre-decisional and deliberative and contains no reasonable
2 segregable factual material.

3
4 Dated: August 24, 2009

A handwritten signature in black ink, appearing to read "Bernard Zimmerman", is written over a horizontal line.

Bernard Zimmerman
United States Magistrate Judge

7
8 G:\BZALL\REFS\CENTER FOR BIOLOGICAL DIVERSITY\REPORT AND RECOMMENDATION.wpd
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28